IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

GARY YUSUPOV, Petitioner/Appellant, v. YEVGENIA YUSUPOVA, Respondent/Appellee.	2 CA-CV 2007-0003 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. D20043903

Honorable Christopher D. Browning, Judge

AFFIRMED

Gary Yusupov — Tucson
In Propria Persona

DeConcini, McDonald, Yetwin & Lacy
By Lisa Schriner Lewis and Alyce L. Pennington — Tucson
Attorneys for Respondent/Appellee

E S P I N O S A, Judge.

¶1 Appellant Gary Yusupov appeals from the decree dissolving his marriage to Yevgenia Yusupova, primarily arguing his attorney did not have authority to enter into the settlement agreement that was approved and enforced by the trial court. He also claims the

court erred by ruling in Yevgenia's favor at an evidentiary hearing and by refusing to continue the hearing. Finally, he maintains he was ineffectively represented by counsel and requests that this court modify certain provisions of the settlement agreement.

Facts[1]

¶2 In October 2004, Gary filed a petition for dissolution of his marriage to Yevgenia. In September 2006, the parties' attorneys negotiated a Marriage Settlement Agreement (MSA) that resolved all issues but one, which they agreed would be "argued before the Court." The MSA provided that Gary would have "sole legal and primary physical custody" of his and Yevgenia's son Alexander, who was then fifteen years old, and that he and Yevgenia would have "divided legal custody" of their then four-year-old daughter Victoria. The MSA also specified, *inter alia*, Victoria would be raised "in the Jewish faith"; Gary would have "final decision making authority regarding Victoria's Jewish upbringing" but Yevgenia would have "final decision making authority for Victoria for all other issues, including but not limited to, education"; Yevgenia would claim both children as dependents for income tax purposes in 2005; Yevgenia would pay Gary $987 in monthly child support; and "[n]either party is entitled to Spousal Support and both parties waive same."

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[1]Gary has included lengthy, argumentative narratives in the statement of facts portion of his opening brief with no citations to the record on appeal as required by Rule 13(a)(4), Ariz. R. Civ. App. P. Accordingly, we state the factual background based on the record and Yevgenia's answering brief. *See Ariz. Dep't of Econ. Sec. v. Redlon,* 215 Ariz. 13, ¶ 2, 156 P.3d 430, 432 (App. 2007). Although we may in our discretion afford a pro se litigant some latitude in matters of procedure, self represented appellants are still required to comply with the rules. *See Higgins v. Higgins*, 194 Ariz. 266, ¶ 12, 981 P.2d 134, 138 (App. 1999).

¶3 The sole issue the MSA left for the trial court's determination was "whether [Yevgenia would] be permitted to allow Victoria to enter a church or place of worship of any religion other than Judaism for any reason whatsoever." At the evidentiary hearing on this question, Gary argued the court should impose an "absolute ban on the child ever visiting a religious structure other than one maintained by followers of the Jewish religion, even for secular purposes." Yevgenia claimed such a ban would "interfere[] with [her] parental rights and personal religious freedoms." On October 4, the court ruled that Yevgenia "may expose [Victoria] to buildings and activities, directly or indirectly related with religions other than Judaism."

¶4 Following the court's ruling, Gary refused to sign the MSA. On October 6, Yevgenia filed a motion to enforce the MSA and enter a decree of dissolution of marriage. Oral argument on the motion was held on October 11. At that time, Gary's attorney moved to be relieved as counsel, which the trial court permitted. On October 13, the court granted Yevgenia's motion and entered the decree of dissolution, which approved and enforced the MSA. That same day, Gary submitted a "Motion to Consider a Supplement of Facts and Disclosures" that asserted, among other things, his attorney had failed to properly represent him and had agreed to terms in the MSA contrary to Gary's explicit instructions. The court denied the motion, which it treated as one for reconsideration. Gary filed a second motion for reconsideration, which the court also denied. On October 20, Gary filed a "motion to modify wording in MSA," in which he requested the court modify the custody arrangement

for Victoria from "divided custody" to "joint custody" and eliminate the provision that he and Yevgenia are not "entitled to Spousal Maintenance." The trial court denied that motion as well. This appeal followed.

Authority to Settle

¶5 Gary first argues his attorney did not have authority to enter into the MSA. He points to several emails he sent his attorney in the days before his attorney agreed to the settlement and claims they "clearly show" he instructed his attorney to not agree to any provisions pertaining to the religious and educational upbringing of Victoria, the parties' right to claim the children as dependents for income tax purposes, or the parties' right to receive child support.

¶6 Generally, an attorney does not have an inherent or implied power, merely by virtue of being retained by the client, to settle a case without the client's consent. *Hays v. Fischer*, 161 Ariz. 159, 164, 777 P.2d 222, 227 (App. 1989). If an attorney has been expressly authorized by the client to enter into a settlement on the client's behalf, however, the attorney's actions bind the client. *Id*. "Whether an attorney, as his client's agent, has authority to bind his client is a question of fact, and the trial court's findings will not be disturbed unless they are unsupported by the evidence or are erroneous as a matter of law." *Id*. at 163, 777 P.2d at 226.

¶7 In its ruling enforcing the MSA, the trial court found that Gary had "on more than one occasion specifically authorized his attorney . . . to enter into the MSA on his

behalf." On appeal, notwithstanding Gary's assertions that he could not afford a transcript of the hearing and that it would, in any event, reflect no "clear and convincing evidence," we must assume the record supports the trial court's finding in the absence of the transcript, which Gary was required to provide by Rule 11(b)(1), Ariz. R. Civ. App. P. *See State ex rel. Dep't. of Econ. Sec. v. Burton*, 205 Ariz. 27, ¶ 16, 66 P.3d 70, 73 (App. 2003); *Baker v. Baker*, 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). We therefore cannot say the court erred in finding Gary's attorney was authorized to settle the case pursuant to the terms in the MSA.[2] *See Burton*, 205 Ariz. 27, ¶ 16, 66 P.3d at 73; *Baker*, 183 Ariz. at 73, 900 P.2d at 767.

Divided Custody

¶8 Gary next contends the provision of the MSA awarding him and Yevgenia "divided custody" of their daughter Victoria is contrary to Arizona law because A.R.S. §§ 25-402 and 25-403.01(A) require that the court grant either "sole custody" or "joint custody." He implicitly claims the trial court erred by denying his "motion to modify wording in MSA," and he asks this court to modify the MSA to grant him and Yevgenia "joint custody" of Victoria.

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[2]Gary also contends "[t]he MSA had to be signed by both parties before [being] submitted to the court" and that the "absence of his signature [is] . . . sufficient to support [a finding] that [he] did not give his agreement." However, Gary has provided no legal basis for that assertion and, as noted by our supreme court in *Hays*, "[w]e are aware of no authority supporting the proposition . . . that a settlement agreement made between counsel is not binding on a party who has expressly authorized it until that party has actually signed the documents necessary to effectuate it." 161 Ariz. at 164, 777 P.2d at 227.

¶9 Section 25-411(A), A.R.S., provides:

> A person shall not make a motion to modify a custody decree earlier than one year after its date unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health.

The dissolution decree, which enforced and approved the custody arrangement, was entered on October 11. Gary's motion to modify the MSA was filed a mere nine days after the date of the decree, and Gary did not allege there was any danger to Victoria's health. Thus, the court did not err by denying his motion and we will not modify the terms of the MSA.[3] *See* § 25-411(A).

Spousal Maintenance

¶10 The MSA states that neither Gary nor Yevgenia are "entitled to Spousal Support and both parties waive same." Gary argues that, because the issue of spousal maintenance "was not contested in the court," the "word entitled cannot apply" and "the wording in the MSA should state that '[the] parties agreed not to pay or receive spousal maintenance,[']rather than '[the] parties are not entitled [to Spousal Maintenance']."

¶11 We again decline to modify the terms of the MSA. Arizona law favors compromise and settlement. *Emmons v. Superior Court*, 192 Ariz. 509, ¶ 22, 968 P.2d 582,

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[3]We note that, under the "divided custody" arrangement in the MSA, Gary and Yevgenia "share legal custody and neither parent's rights are superior, except with respect to specified decisions as set forth by . . . the parents in the final judgment." A.R.S. § 25-402(2). Thus, Gary and Yevgenia already have "joint legal custody" of Victoria in substance, if not in name. *See id.*

585 (App. 1998). The trial court found that Gary and Yevgenia had agreed that neither party was "entitled" to spousal maintenance. Because, as noted earlier, we do not have a transcript of the hearing that led to this determination, we must assume that the record supports the trial court's decision; thus, we cannot say the court erred by approving and enforcing the MSA as it was drafted. *See Burton*, 205 Ariz. 27, ¶ 16, 66 P.3d at 73.

Ineffective Assistance

¶12 Gary also asserts he was ineffectively represented by his attorney throughout the proceedings in the trial court, claiming his attorney was inexperienced in family law, incapable of protecting his interests, and "mishandled" his case. The Arizona and United States constitutions guarantee effective assistance of counsel to defendants in criminal prosecutions. *See* U.S. Const. amend. VI; Ariz. Const. art. II, § 24. Litigants in a civil proceeding, however, have no similar guarantee. *See Friedman v. State of Ariz.*, 912 F.2d 328, 333 (9th Cir. 1990); *see generally Donald W., Sr. v. Ariz. Dep't. of Econ. Sec.*, 215 Ariz. 199, ¶ 27, 159 P.3d 65, 73 (App. 2007). We therefore do not address this claim further.

Continuance

¶13 At the October 11 hearing on Yevgenia's motion to enforce the MSA and enter a decree of dissolution, the trial court granted Gary's attorney's request to be relieved as counsel. Gary contends the court erred by denying his request for a continuance to give him additional time to prepare to proceed as a pro se litigant and to obtain expert witnesses that would testify in the areas of religion and income tax. There is nothing in the record,

however, to suggest that Gary ever requested a continuance and, because he has failed to present a transcript of the proceeding, we cannot say the court erred in denying any request that was made. *See Burton*, 205 Ariz. 27, ¶ 16, 66 P.3d at 73; *see also McDowell Mountain Ranch Land Coal. v. Vizcaino*, 190 Ariz. 1, 5, 945 P.2d 312, 316 (1997) (decision to grant or deny a continuance within sound discretion of trial court).

Evidentiary Hearing

¶14 Gary lastly asserts the trial court's ruling that Yevgenia is permitted to take Victoria to a church or religious institution other than one dedicated to Judaism violates his right to control Victoria's religious upbringing and that he, not the court, "should decide whether [Victoria] can attend a church or not." The MSA provides that Gary has "final decision making authority regarding Victoria's Jewish upbringing." But it also provides that his decisional authority in this area is "subject to . . . limitations," including the court's right to "rule regarding whether [Yevgenia] will be permitted to allow Victoria to enter a church or place of worship of any religion other than Judaism." Thus, Gary explicitly agreed that the court, and not he, would decide this precise issue.

¶15 After the evidentiary hearing at which the parties and a Jewish rabbi apparently testified, the trial court found that an "absolute edict of zero tolerance for the child to ever visit or set foot in a building or structure maintained by a religion other than the Jewish faith, is impractical and unreasonable" and would "invite continued and protracted litigation between the parties." Gary has not put forth any colorable legal argument showing why these

findings are erroneous, and we have found none. We therefore cannot say the court erred in ruling that Yevgenia may permit Victoria to visit a church or place of worship dedicated to a religion other than Judiasm. *See* Ariz. R. Civ. P. 52(a).

Attorney Fees

¶16 Yevgenia contends she is entitled to attorney fees pursuant to A.R.S. § 25-324 because Gary's arguments on appeal are unreasonable and he "violated numerous requirements of the Arizona Rules of Civil Appellate Procedure." In light of the disparity between the parties' financial resources, however, we, in our discretion, decline to award attorney fees. *See* § 25-324; *McNutt v. McNutt*, 203 Ariz. 28, ¶ 27, 49 P.3d 300, 306 (App. 2002).

Disposition

¶17 We affirm the trial court's rulings at the post-decree evidentiary hearing and the decree of dissolution and decline Gary's invitation to modify the terms of the MSA.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

GARYE L. VÁSQUEZ, Judge